

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Kormahyah Karmue

v.

Civil No. 17-cv-107-LM-AKJ

David Remington, Chief Deputy
United States Marshal, et al.¹

O R D E R

Before the court is plaintiff Kormahyah Karmue's Amended Complaint (Doc. No. 11), which is the operative complaint in this matter, asserting claims against employees of both the United States Marshals Service for the District of Rhode Island ("USMS-RI") and the Donald W. Wyatt Detention Center ("WDC"), pursuant to 42 U.S.C. § 1983 and Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). The Amended Complaint (Doc. No. 11) is before the court for preliminary review, pursuant to 28 U.S.C. § 1915A(a).

In a Report and Recommendation ("R&R") issued simultaneously with this Order, the court identified seven

¹Karmue identifies the following defendants in the caption and/or narrative portion of the Amended Complaint (Doc. No. 11): United States Marshals Service for the District of Rhode Island ("USMS-RI") Chief Deputy David Remington; USMS Deputies John Doe #1, #2, #3, and #4; and the Warden of the Donald W. Wyatt Detention Center. Additionally, Karmue asserts claims against unnamed "agents" of the defendants.

claims, some with subparts, asserted by Karmue in his amended complaint. As fully explained in the R&R, and as set forth herein, the court now directs that certain claims be served at this time, and provides Karmue with an opportunity to amend other claims asserted in the amended complaint.

Discussion

I. Claims to be Served

A. Claims Against John Does #1 - #4

The claims identified in the R&R as Claims 1, 2, and 3, are asserted against unnamed USMS-RI deputies identified as John Does #1 - #4. The clerk's office is directed to prepare and issue summonses for John Does #1 - #4, using the address of the USMS-RI, and to make copies of the Amended Complaint (Doc. No. 11), the motions for temporary restraining orders (Doc. Nos. 17-20), the motions for preliminary injunctions (Doc. Nos. 21-24), the June 27, 2017 R&R (Doc. No. 41), the R&R issued this date, and this Order. The clerk's office is directed to send a copy of those documents, including the summonses, to the Attorney General of the United States, by certified mail. The clerk's office is further directed to provide two sets of copies of those documents and the summonses to the United States Marshals Service for delivery to the civil process clerk at the Office of

United States Attorney for the District of Rhode Island,
pursuant to procedures authorized by Rules 4(c)(3), 4(e) and
4(i)(3) of the Federal Rules of Civil Procedure.

Within sixty days of the date of this Order, the United States Attorney for the District of Rhode Island is directed to file a notice stating the names of the individuals identified in this Order as John Does #1 - #4, as well as an address at which those defendants can be served.² If the names of the John Doe defendants cannot be determined within sixty days, the United States Attorney for the District of Rhode Island is directed to file a notice to that effect with the court, setting forth the efforts made to discover the identity of those defendants.

Upon receipt of the identity and address of the John Doe defendants, or other response to this Order, the court may direct service on those defendants as necessary. No answer to the amended complaint need be filed on behalf of any of the defendants identified as John Does #1 - #4 prior to this court's issuance of an Order directing service upon those defendants individually.

²If any John Doe defendant to this action can be identified, but cannot be served at the USMS-RI, the United States Attorney must provide the last known address of that individual to the court. If appropriate, the United States may file a motion to seal the unredacted notice, along with a redacted copy of the notice to place in the public docket. See LR Gen 102.

B. Americans with Disabilities Act Claim

The clerk's office is directed to prepare a summons form for the WDC Warden, using the WDC address. The clerk's office shall forward to the USMS-RI: the Amended Complaint (Doc. No. 11), the motions for temporary restraining orders (Doc. Nos. 17-20), the motions for preliminary injunctions (Doc. Nos. 21-24), the June 27, 2017 Report and Recommendation (Doc. No. 41), and this Order, for service on the WDC Warden, using the WDC address. Upon receipt of the necessary documentation, the USMS-RI is directed serve process upon the WDC Warden pursuant to 28 U.S.C. § 1915(d) and Rules 4(c)(3), 4(e), and 4(j)(2) of the Federal Rules of Civil Procedure.

Defendant is instructed to answer or otherwise plead within twenty-one days of service. See Fed. R. Civ. P. 12(a)(1)(A). Plaintiff is instructed that all future pleadings, written motions, notices, or similar papers shall be served directly on the WDC Warden by delivering or mailing the materials to that defendant or the defendant's attorney(s), pursuant to Fed. R. Civ. P. 5(b).

II. Claims to be Amended

A. Inadequate Medical Care Claims

As fully discussed in the R&R, in claims identified therein

as Claims 4 and 7, the plaintiff has alleged facts suggesting that the WDC Warden, and unnamed WDC medical staff members failed to provide him with adequate medical care at WDC, and that unnamed individuals failed to provide him with adequate medical care at his current place of incarceration, the Federal Medical Center, Devens, in Massachusetts ("FMC-Devens"). Before this court can direct service of federal claims against any individual WDC or FMC-Devens staff member, however, and before this court will conclude whether this court is an appropriate venue for claims against FMC-Devens personnel, plaintiff must name, or otherwise specifically identify, the individual WDC and FMC-Devens employees who he alleges are responsible for denying him adequate care.

Further, Karmue must state facts to demonstrate that each individual defendant, against whom Karmue intends to assert inadequate medical care claims, knew or should have known that Karmue had a serious medical problem, and must state, with specificity, what each individual defendant did or failed to do that resulted in a deprivation of adequate care for Karmue's serious medical needs. Accordingly, Karmue is directed to amend his complaint, within thirty days of the date of this Order, to name specific defendants to his inadequate medical care claims, and to state specific facts demonstrating how each defendant

violated his right to adequate medical care. Pending Karmue's response to this Order, the court takes under advisement the question of whether this court is the proper venue for a claim against the FMC-Devens defendants.

B. Retaliation Claims

In the claim identified as Claim 6 in the R&R, Karmue alleges that unnamed WDC medical department and WDC SHU staff members retaliated against him, in response to his repeated requests for medical care, by transferring him from the WDC medical clinic to SHU, and then by threatening to subject him to further worsened conditions of confinement, should he continue to complain about his medical care. Karmue has failed, however, to name specific defendants to those claims. Within thirty days of the date of this Order, Karmue must amend his complaint to name one or more defendants to his retaliation claim, and to state, with specificity, what each defendant did or failed to do that renders him or her liable for retaliating against Karmue.

Conclusion

For the foregoing reasons, the court directs as follows:

1. Claims 1-3, as numbered and set forth in the R&R issued this date, shall be served on John Does #1, #2, #3, and #4, in accordance with this Order.

2. The United States Attorney is directed to determine, and to file, within sixty days, the names and service addresses of the defendants identified herein as John Does #1 - #4, or notice that no such information can be provided, in accordance with this Order. The individual defendants identified as John Does #1 - #4 need not answer the amended complaint, except as set forth in this Order, until directed to do so by the court.

3. Claim 5, as numbered and set forth in the R&R issued this date, shall be served on the WDC Warden, and the WDC Warden shall file an answer or other response, in accordance with this Order.

4. Karmue must amend his complaint in regard to Claims 4, 6, and 7, as numbered and set forth in the R&R issued this date, as explained in that R&R and this Order, within thirty days of the date of this Order. Pending Karmue's response to this Order, the court takes under advisement the question of whether this court is the proper venue for a claim against the FMC-Devens defendants.

SO ORDERED.



Andrea K. Johnstone
United States Magistrate Judge

July 21, 2017

cc: Kormahyah Karmue, pro se